Department of Fish and Game
Response to Key Questions and Review Assignments for Agencies
Group #1 Intent/Goals – Definitions
May 1, 2008

Number indicates section of the Forest Practice Rules

916
Suggested revision:

...It is the intent of the Board to clarify and assign responsibility for recognition of potential and existing impacts of timber operations on watercourses and lakes, native aquatic and riparian-associated species, and the beneficial functions of riparian zones and to ensure ~~adoption of~~ that all harvesting plans include feasible measures to effectively achieve compliance with this article...

Comment:
The phrase "adoption of" is unclear regarding the means by which the Board intends to achieve the objectives described. The proposed change clarifies that harvesting plans must comply with the stated objectives.

With respect to species listed under the California Endangered Species Act, we refer the Board to Fish and Game Code section 2055 and recommend that the T&I rules provide consistency with the purposes of the CESA.

916(c)
Suggested revision:

...shall be given equal consideration as a management objective within any prescribed WLPZ ~~and~~, within any ELZ or EEZ designated for watercourse or lake protection~~.~~, and any other location where operations may affect riparian zones or the quality and beneficial uses of water.

Comment:
Operations on areas outside of WLPZ, ELZ, or EEZ may have substantial effects on aquatic and riparian habitat, such as through contribution to slope failures. Plans should give equal consideration to aquatic and riparian habitats regardless of the location of operations.

916.1
Comment:
While not identified as a component of the Group #1 rules, the language of this section strongly affects the implementation of the regulations. In practice, proposed in-lieu practices often do not achieve the full intent of the FPR to restore, enhance, and maintain aquatic and riparian habitat. The requirement to provide protection at least equal to the standard rule is often only considered with respect to pre-identified erosion control effects. We recommend that this section is modified to explicitly require protection of all aquatic and riparian habitat functions and to require adherence to the standard rule when one or more reviewing agency recommends against the proposed in-lieu practice.

916.9(a)
Suggested revision:

GOAL - Every timber operation shall be planned and conducted to prevent deleterious interference with the watershed conditions that ~~primarily limit~~adversely affect the values set forth in 14 CCR 916.2 [936.2, 956.2](a) (e.g., sediment load increase~~ where sediment is a primary limiting factor~~; thermal load increase~~ where water temperature is a primary limiting factor~~; loss of instream large woody debris or recruitment potential~~ where lack of this value is a primary limiting factor~~; substantial increase in peak flows or large flood frequency~~ where peak flows or large flood~~

~~frequency are primary limiting factors~~). To achieve this goal, every timber operation shall be planned and conducted to meet the following objectives~~where they affect a primary limiting factor~~:

Comment:
While a limiting factors approach may be an appropriate method of prioritizing restoration and recovery actions, it is not an appropriate standard for protecting public trust resources from adverse effects. Which particular factors "primarily limiting" may be difficult to determine and may vary through time and space. In addition, a plan may have substantial adverse effects on a habitat factor which was not "primarily limiting" prior to the operations of the plan. This places an unreasonable burden on reviewing agencies to demonstrate that any particular habitat function is a "primary limiting factor." As currently written, this section is inconsistent with CEQA, which requires that all significant adverse impacts to the environment are avoided, minimized, and/or mitigated.

916.9(a)(1)
Suggested revision:

Comply with the terms of a Total Maximum Daily Load (TMDL) that has been adopted to address factors that may be affected by timber operations if a TMDL has been adopted, or not result in any ~~measurable~~ sediment load increase to a watercourse system or lake.

Comment:
The quantity of sediment load increase which may result from the operations of a plan is unlikely to be readily measurable during either plan review or implementation. It should be a goal of the rules to prevent adverse effects even if they cannot be readily measured.

916.9(a)(2)
Suggested revision:

Not result in any ~~measurable~~ decrease in the stability of a watercourse channel or of a watercourse or lake bank.

Comment:
We are not aware of accepted methods for measuring watercourse channel or bank stability. It should be a goal of the rules to prevent adverse effects even if they cannot be readily measured.

916.9(a)(3)
Suggested revision:

Not result in any ~~measurable blockage of any aquatic migratory routes~~ <u>passage barriers</u> for <u>all life stages of</u> anadromous salmonids or listed species.

Comment:
While methods exist to quantify the extent to which a feature may act as a passage barrier for salmonids through changes in flow for different life stages of salmonid species, these measurements are unlikely to be applied during plan review or implementation.

As currently written, the rule may be limited to upstream migration by spawning adults. Barriers to the movement of other life stages may also have effects. Barriers to juveniles during low flows may inhibit their ability to select preferable habitats. DFG recommends that this rule clearly extend to partial barriers that may inhibit passage of any life stage of covered species.

916.9(a)(4)
Suggested revision:

Not result in any ~~measurable~~ <u>adverse effects to aquatic species through</u> stream flow reductions

during critical low water periods ~~except as part of an approved water drafting plan pursuant to 14 CCR 916.9(r) [936.9(r), 956.9(r)]~~.

Comment:
The goal of the rule should be to avoid adverse effects resulting from stream flow reductions regardless of whether they are measured or conducted under a water drafting plan. It should be recognized that as currently written, 916.9(r) does not ensure that adverse effects are avoided. RPF determinations regarding the applicability of the provisions of 916.9(r) are often made without appropriate supporting measurements.

916.9(a)(5)
Suggested revision:

~~Consistent with the requirements of 14 CCR § 916.9(i), 14 CCR § 936.9(i), or 14 CCR § 956.9(i);~~ ~~p~~Protect, maintain, and restore trees (especially conifers), snags, or downed large woody debris that currently, or may in the foreseeable future, provide large woody debris recruitment needed for instream habitat structure ~~and~~, fluvial geomorphic functions, and riparian habitat within the WLPZ.

Comment:
The goal of the rule should not be limited to the application of 916.9(i), etc. Where appropriate, plans should also identify measures to meet this goal with measures beyond those specified in 916.9(i). Woody debris within the WLPZ also provides habitat features for riparian-associated species and for aquatic species during high-flow events.

916.9(a)(6)
Suggested revision:

~~Consistent with the requirements of 14 CCR § 916.9(g), 14 CCR § 936.9(g), or 14 CCR § 956.9(g); p~~Protect, maintain, and restore the quality and quantity of vegetative canopy needed to: (A) provide shade to the watercourse or lake, (B) minimize daily and seasonal temperature fluctuations, (C) maintain daily and seasonal water temperatures within the preferred range for anadromous salmonids or listed species where they are present or could be restored, and (D) provide hiding cover and a food base where needed.

Comment:
The goal of the rule should not be limited to the application of 916.9(g), etc. In some cases alternative measures may be appropriate to achieve the objectives identified.